

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

**BAXLEY CORPORATION, LLC
DEBTOR.**

**CASE NO. 22-00397-5-DMW
CHAPTER 7**

MOTION FOR TURNOVER

NOW COMES, Baxley Leasing, LLC, and Martha Ginger Baxley (collectively “Movants”), by and through counsel, and respectfully move this Court for an Order directing TRI CITY AUTOMOTIVE SERVICE CENTER, LLC (“Tri City”), to turnover a 2010 BMW X5 (“Car”) to Movants, pursuant to 11 U.S.C. § 542(a), the Order Granting Trustee’s Motion to Approve Compromise and Settlement with Baxley Leasing, LLC and Baxley Constructions Co., Inc., Pursuant to Fed. R. Bank. P. 9019 [DE-237], and Order Allowing Motion to Extend Stay [DE-292]. In support of this, Movants state to the Court:

1. On February 23, 2022, Baxley Corporation LLC (“Corp”) filed a petition for relief under Chapter 7 of the Bankruptcy Code (the “Petition Date”) and James B. Angell is the duly appointed Chapter 7 Trustee.

2. On March 9, 2022, the Trustee file an Adversary Proceeding asserting that the Debtor was an alter ego of the Debtor.

3. On May 25, 2022, the Trustee filed a Motion to Approve Compromise and Settlement with Baxley Leasing, LLC and Baxley Construction Co., Inc., Pursuant to Fed. R. Bankr. P. 9019 [DE-205].

4. The Order Granting Trustee’s Motion to Approve Compromise was entered on June 28, 2022 [DE-237].

5. The Settlement, among other things, involved Baxley Leasing providing a promissory note in the amount of \$249,461.37 payable to the Debtor’s Estate and secured by certain equipment and vehicles, including Car, owned or to be acquired by Baxley Leasing, LLC. In essence, Baxley Leasing was buying the equity of the Equipment and Vehicles from the Trustee for the benefit of the Debtor’s Estate.

6. To protect this interest, it was agreed that Movants with the support of the Trustee would move the Bankruptcy Court to extend the Automatic Stay.

7. The automatic stay provided by 11 U.S.C. § 362(a)(3) is designed to stop “any act

to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate”

8. Here, the Equipment and Vehicles, including the Car, are owned by Baxley Leasing and the equity is property of the Debtor’s Estate pursuant to the security agreement provided under the settlement agreement.

9. Upon information and belief of Movants, Tri City negligently attempted to repair the Car but was unable to do so and may have caused additional damage to Car. In lieu of damages, Movants simply requested Tri City return Car to them so that competent repairs can be made on Car to protect and increase its value. This request was denied.

10. Tri City has possession of the car, and in order to protect the equity, Movants request the Car be turned over to them for inspection and repair. If, upon inspection by a BMW certified repairperson, it is determined that Tri City’s work was beneficial, Movants will pay Tri City for the repairs that total \$2,197.72.

11. Accordingly, Movants ask this Court for an Order requiring Tri City or any other party having possession of the Car to immediately turnover the Car to Movants.

WHEREFORE, Baxley Leasing, LLC, and Martha Ginger Baxley, respectfully ask this Court enter an Order requiring Tri City or any other party having possession of the Car immediately turnover the Car to Movants, subject to Movants paying Tri City \$2,197.72 for repairs if it is determined that its repairs were beneficial, or be sanctioned for violations of the Automatic Stay in an amount determined by this Court.

Respectfully submitted, this the 30th day of September 2022.

EVERETT GASKINS HANCOCK LLP

/s/ William H. Kroll

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NOTICE OF MOTION FOR TURNOVER

NOTICE IS HEREBY GIVEN that Baxley Leasing, LLC, and Martha Baxley filed a **Motion for Turnover** on September 30, 2022, to protect the equity in certain Equipment and Vehicles that is property of the Debtor's Estate pursuant to the security agreement provided under a settlement agreement.

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response and request for a hearing is made by a party in interest in writing to the Clerk of this Court on or before **14 days** from the date of this Notice.

This 30th day of September 2022.

s/William H. Kroll
WILLIAM H. KROLL
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Notice** and **Motion for Turnover** was electronically filed through CM/ECF or served via the U.S. postal service, postage prepaid as noted:

Via CM/ECF:

Bankruptcy Administrator

James B. Angell
Howard Stallings, From, Atkins,
Angell & Davis, P.A.
Chapter 7 Trustee

Via U.S. postal service, postage prepaid and email:

Tri City Automotive
Attn: Manager, Agent, Officer
990 S. Bennett St.
Southern Pines, NC 28387

Email:
tricityautomotive222@gmail.com

This the 30th day of September 2022.

/s/ William H. Kroll
William H. Kroll